

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL V. GAINES,

Petitioner,

-v-

D. McINTOSH,

Respondent.  
----- X

21 Civ. 6619 (JPC) (SDA)

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

JOHN P. CRONAN, United States District Judge:

Petitioner Michael V. Gaines seeks a writ of habeas corpus, arguing that his trial and appellate counsel were unconstitutionally ineffective, that his sentence violated the Eighth Amendment, and that he was unconstitutionally denied appointed postconviction counsel. *See generally* Dkt. 2. By Order dated March 23, 2022, the Honorable Stewart D. Aaron, to whom this case had been referred, issued a Report and Recommendation, which recommended that Gaines’s petition be denied and that the Court decline to issue a certificate of appealability. Dkt. 17.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no objections are made, the Court reviews the Report and Recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).


The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days from service

of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. Dkt. 17 at 11. No objections have been filed and the time for making any objections has passed. The parties have therefore waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604-05 (2d Cir. 2008) (reviewing caselaw establishing that a *pro se* litigant waives appellate review when the litigant does not timely object to a report and recommendation after receiving notice from the magistrate judge of the consequences of failing to do so).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation, and finds it to be well reasoned and its conclusions well founded. Accordingly, the Court ADOPTS the Report and Recommendation in its entirety. The Court also declines to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(A).

SO ORDERED.

Dated: August 4, 2022  
New York, New York

  
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JOHN P. CRONAN  
United States District Judge